

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOEL RICH AND MARY RICH,

Plaintiffs,

v.

FOX NEWS NETWORK, LLC, MALIA  
ZIMMERMAN, AND ED BUTOWSKY,

Defendants.

Civil Action No. 1:18-cv-02223 (GBD)

**DECLARATION OF JOSEPH M. TERRY IN SUPPORT OF THE  
MOTION OF FOX NEWS NETWORK, LLC, AND MALIA ZIMMERMAN  
TO DISMISS THE AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM**

I, Joseph M. Terry, hereby declare as follows:

1. I am a partner at the law firm of Williams & Connolly LLP, counsel of record for defendant Fox News Network, LLC. I have personal knowledge of the facts set forth in this declaration, and make this declaration in support of Fox News Network, LLC, and Malia Zimmerman's motion to dismiss the amended complaint for failure to state a claim.

2. Attached hereto as Exhibit 1 is a true and correct copy of a Fox News online article dated May 16, 2017, entitled "Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources."

3. Attached hereto as Exhibit 2 is a true and correct copy of a Fox News online article dated May 16, 2017, entitled "Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources."

4. Attached hereto as Exhibit 3 is a true and correct copy of a Fox News online article dated May 16, 2017, entitled "Family of slain DNC staffer Seth Rich blasts detective over report of WikiLeaks link."

5. Attached hereto as Exhibit 4 is a true and correct copy of an exhibit filed by Rod Wheeler in the related case *Wheeler v. Twenty-First Century Fox, Inc.*, No. 17-05807 (S.D.N.Y.), Dkt. 60-1.

6. Attached hereto as Exhibit 5 is a true and correct copy of the 1999 administrative complaint brought by the Office of the Governor, State of Hawaii, against Pacific Business News and obtained from the University of Hawaii Library Archives.

7. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiffs' First Set of Requests for Production of Documents to Defendant Fox News Network, LLC.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Contributor Agreement between Rod Wheeler and Fox News Network, LLC, for the period from January 1, 2017, to and including December 31, 2018.

I declare under the penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 31st day of January, 2020.



Joseph M. Terry

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2020, I electronically filed the foregoing Declaration of Joseph M. Terry in Support of the Motion of Fox News Network, LLC, and Malia Zimmerman to Dismiss the Amended Complaint For Failure to State a Claim with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter who are on the CM/ECF system.

/s/ Joseph M. Terry  
Joseph M. Terry

# **EXHIBIT 1**

Politics

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CRIME

Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources



By Malia Zimmerman • Published May 16, 2017 • Fox News



The Democratic National Committee staffer who was gunned down on July 10 on a Washington, D.C., street last July just steps from his home had leaked thousands of internal emails to WikiLeaks, law enforcement sources told Fox News.

A federal investigator who reviewed an FBI forensic report detailing the contents of DNC staffer Seth Rich's computer generated within 96 hours after his murder, said Rich made contact with Wikileaks through Gavin MacFadyen, a now-deceased American investigative reporter, documentary filmmaker, and director of WikiLeaks who was living in London at the time.

"I have seen and read the emails between Seth Rich and Wikileaks," the federal investigator told Fox News, confirming the MacFadyen connection. He said the emails are in possession of the FBI, while the stalled case is in the hands of the Washington Police Department.

The revelation is consistent with the findings of Rod Wheeler, a former DC homicide detective and Fox News contributor and whose private investigation firm was hired by Rich's family to probe the case. Rich was shot from behind in the wee hours, but was not robbed.

"My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks," Wheeler said. "I do believe that the answers to who murdered Seth Rich sits on his computer on a shelf at the DC police or FBI headquarters."

The federal investigator, who requested anonymity, said 44,053 emails and 17,761 attachments between Democratic National Committee leaders, spanning from January 2015 through late May 2016, were transferred from Rich to MacFadyen before May 21.

On July 22, just 12 days after Rich was killed, WikiLeaks published internal DNC emails that appeared to show top party officials conspired to stop Sen. Bernie Sanders of Vermont from becoming the party's presidential nominee. That controversy resulted in Debbie Wasserman Schultz resigning as DNC chairperson. A number of Sanders supporters refused to back party nominee Hillary Clinton, and some subsequently formed groups to work against Clinton and the party.

WikiLeaks leader Julian Assange has stopped short of identifying Rich as the source of the emails, but has taken a keen interest in the case, and has not denied working with Rich.

“WikiLeaks has decided to issue a US\$20k reward for information leading to conviction for the murder of DNC staffer Seth Rich,” the organization announced.

Washington’s Metropolitan Police Department has no suspects and no substantial leads as to who the killer or killers may be, sources close to the investigation said. Metropolitan Police, including the police chief, have refused to discuss the case, despite requests from Fox News dating back 10 months.

The FBI’s national office declined to confirm its role in the investigation, but sources said the bureau provided cyber expertise to examine Rich’s computer.

Wheeler believes powerful forces are preventing the case from a thorough investigation.

“My investigation shows someone within the D.C. government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” Wheeler told Fox News. “That is unfortunate. Seth Rich’s murder is unsolved as a result of that.”

The botched robbery theory, which police have pursued for nearly a year, isn’t panning out, Wheeler said. Two assailants caught on a grainy video tape from a camera posted outside a grocery mart, shot Rich twice in his back, but did not take his wallet, cell phone, keys, watch or necklace worth about \$2,000.

Police should consider all angles, Wheeler said, especially in light of Assange’s statements to a Dutch television reporter who asked about Rich.

“I am suggesting,” Assange told the Dutch reporter, “that our sources take risks, and

they, they become concerned to see things occurring like that.”

On Twitter, WikiLeaks announced the reward but said Assange’s statement “should not be taken to imply that Seth Rich was a source for WikiLeaks or to imply that his murder is connected to our publications” because WikiLeaks has a policy not to release the names of its sources, even after their death.

In subsequent appearances on Fox News Channel, Assange confirmed, “We’re interested in anything that might be a threat to alleged WikiLeaks sources.”

Assange has not returned a series of recent emails from Fox News about Rich.

MacFadyen, who was considered a mentor by Assange, died of lung cancer on Oct. 22 at age 76.

D.C. police have announced a \$25,000 reward for information leading to the conviction of Rich’s killer. Republican lobbyist Jack Burkman has offered a separate \$130,000 reward.

Rich had been at Lou’s City Bar a couple of miles from his home until about 1:15 a.m. He walked home, calling several people along the way. He called his father, Joel Rich, who he missed because he had gone to sleep. He talked with a fraternity brother and his girlfriend, Kelsey Mulka.

Around 4:17 a.m., Rich was about a block from his home when Mulka, still on the phone with him, heard voices in the background. Rich reassured her that he was steps away from being at his front door and hung up.

Two minutes later, Rich was shot twice. Police were on the scene within three minutes. Rich sustained bruising on his hands and face. He remained conscious, but died at a nearby hospital less than two hours later.

Police detectives will not say whether Rich provided them with any clues about the

identity of his attackers or their motivation, Wheeler said. However, Wheeler believes Rich could have provided information prior to his death of who was responsible for carrying out his murder.

Police also have refused to release security footage from a market on the corner of the crosswalk where Rich was killed. The footage, sources told Fox News, shows two people following Rich across the tiny crosswalk just moments before he was attacked. The camera captured grainy footage of the assailants' legs and Rich as he fell backwards into the street after being shot.

Wheeler said normally police would release the footage to the media. The family also should be privy to the entire case jacket, with all the details of the case, unless they are considered suspects, Wheeler said. However, to date, the family has not received a copy of the tape or most of the details related to their son's murder case. The homicide case remains open, according to a spokesperson for D.C. police.

Rich's father, Joel Rich, could not be reached for comment, but [told Fox News in January](#) that he didn't believe his son would leak the emails. However, he said above all, his son "wanted to make a difference in the world."

*Malia Zimmerman is an award-winning investigative reporter focusing on crime, homeland security, illegal immigration crime, terrorism and political corruption. Follow her on twitter at @MaliaMZimmerman*

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# **EXHIBIT 2**

CRIME

## Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources



By **Malia Zimmerman**  
Published May 16, 2017  
Fox News



NOW PLAYING

Report: Slain DNC staffer was in contact with WikiLeaks

The Democratic National Committee staffer who was gunned down on July 10 on a Washington, D.C., street just steps from his home had leaked thousands of internal emails to WikiLeaks, investigative sources told Fox News.

A federal investigator who reviewed an FBI forensic report -- generated within 96 hours after DNC staffer Seth Rich's murder -- detailing the contents Rich's computer said he made contact with WikiLeaks through Gavin MacFadyen, a now-deceased American investigative reporter, documentary filmmaker, and director of WikiLeaks who was living in London at the time.

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*“My investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks.”*

*- Rod Wheeler, former DC homicide investigator*

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“I have seen and read the emails between Seth Rich and WikiLeaks,” the federal investigator told Fox News, confirming the MacFadyen connection. He said the emails are in possession of the FBI, while the stalled case is in the hands of the Washington Police Department.

The revelation is consistent with the findings of Rod Wheeler, a former DC homicide detective and Fox News contributor and whose private investigation firm was hired by Rich's family to probe the case. Rich was shot from behind in the wee hours, but was not robbed.

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## Related Image





Rich was fiercely patriotic, say family members. (Rich family)

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## Related Image





Seth Rich, shown here with his mother, was idealistic and wanted to change the world, his father said. (Rich family)

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“My investigation shows someone within the D.C. government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” Wheeler told Fox News. “That is unfortunate. Seth Rich’s murder is unsolved as a result of that.”

A spokesman for the Rich family said Wheeler was not authorized to speak for the family and called assertions Seth Rich sent emails to WikiLeaks “unsubstantiated.” Brad Bauman said even if purported emails were to surface, it would not necessarily mean Rich had helped WikiLeaks.

"Even if tomorrow, an email was found, it is not a high enough bar of evidence to prove any interactions as emails can be altered and we've seen that those interested in pushing conspiracies will stop at nothing to do so," Bauman said. "We are a family who is committed to facts, not fake evidence that surfaces every few months to fill the void and distract law enforcement and the general public from finding Seth's murderers."

Whatever Rich's possible activities prior to his murder, the case remains a mystery.

Two assailants caught on a grainy video tape from a camera posted outside a grocery mart, shot Rich twice in his back, but did not take his wallet, cell phone, keys, watch or necklace worth about \$2,000.

Police should consider all angles, Wheeler said, especially in light of Assange's statements to a Dutch television reporter who asked about Rich.

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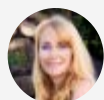
# **EXHIBIT 3**

## Politics

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### CRIME

# Family of slain DNC staffer Seth Rich blasts detective over report of WikiLeaks link



By Malia Zimmerman • Published May 16, 2017 • Fox News



The family of the Democratic National Committee staffer who was gunned down on July 10 on a Washington, D.C., blasted reports that he was a source of emails leaked to WikiLeaks.

Rod Wheeler, a retired Washington homicide detective and Fox News contributor investigating the case on behalf of the Rich family, made the WikiLeaks claim, which was corroborated by a federal investigator who spoke to Fox News.

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*“My investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks.”*

*- Rod Wheeler, former DC homicide investigator*

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Wheeler made his comments on the possible Rich-Wikileaks connection in a story [first reported Monday night by Fox 5 DC](#).

But a spokesman for Rich's family on Tuesday said Wheeler was not authorized to speak for the family and called assertions Seth Rich sent emails to WikiLeaks "unsubstantiated." Brad Bauman said even if purported emails were to surface, it would not necessarily mean Rich had helped WikiLeaks.

"Even if tomorrow, an email was found, it is not a high enough bar of evidence to prove any interactions as emails can be altered and we've seen that those interested in pushing conspiracies will stop at nothing to do so," Bauman said. "We are a family who is committed to facts, not fake evidence that surfaces every few months to fill the void and distract law enforcement and the general public from finding Seth's murderers."

Although Bauman said Wheeler was paid by a third party, the family is named as clients of Wheeler's Capitol Investigations on a contract signed by Rich's father, Joel Rich.

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### **Related Image**

The family has been sensitive to speculation that Rich could have leaked emails damaging to the DNC since he was murdered during the height of the presidential campaign in a case that remains unsolved. Wheeler and the federal investigator insist that there is evidence to back their claims.



Rich was fiercely patriotic, say family members. (Rich family)

An FBI forensic report of Rich's computer -- generated within 96 hours after Rich's murder -- showed he made contact with WikiLeaks through Gavin MacFadyen, a now-deceased American investigative reporter, documentary filmmaker, and director of WikiLeaks who was living in London at the time, the federal source told Fox News.

## Related Image



Seth Rich, shown here with his mother, was idealistic and wanted to change the world, his father said. (Rich family)

"I have seen and read the emails between Seth Rich and WikiLeaks," the federal investigator told Fox News, confirming the MacFadyen connection. He said the emails are in possession of the FBI, while the stalled case is in the hands of the Washington Police Department.

The revelation is consistent with the findings of Wheeler, whose private investigation firm was hired by a third party on behalf of Rich's family to probe the case.

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Assange has not returned a series of recent emails from Fox News about Rich. MacFadyen, who was considered a mentor by Assange, died of lung cancer on Oct. 22 at age 76.

Washington’s Metropolitan Police Department has no suspects and no substantial leads as to who the killer or killers may be, sources close to the investigation said. Metropolitan Police, including the police chief, have refused to discuss the case, despite requests from Fox News dating back 10 months.

The department released a statement on the case saying it remains an active investigation and that detectives are working with Rich's family.

"If there are any individuals who feel they have information, we urge them to call us at (202) 727-9099 or text us at 50411," read the statement. "The department is offering a reward of up to \$25,000 for information on this case that leads to the arrest and conviction of the person or persons responsible."

The FBI's national office declined to comment, but sources said the bureau provided cyber expertise to examine Rich's computer.

D.C. police have announced a \$25,000 reward for information leading to the conviction of Rich's killer. Republican lobbyist Jack Burkman has offered a separate \$130,000 reward.

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# **EXHIBIT 4**

**Capitol Investigations/Rod Wheeler Representative Agreement**

6710 Oxon Hill Rd. Suite 210

National Harbor, MD 20745

Ph. 202.805.8001

www.4capitol.com

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**Client: Joel Rich, Mary Rich, Aaron Rich**

**Case: Murder of Seth Rich**

**MPD CCN#16-113-797**

Joel Rich, Mary Rich, and Aaron Rich hereinafter referred to as "Client" do hereby agree to retain the services of Capitol Investigations/Rod Wheeler Private Investigation Consultants, which maintains its offices at 6710 Oxon Hill Rd., Suite 210, National Harbor, MD. 20745, for consultation and information gathering on behalf of the immediate family of Seth Rich on the following matter:

- Interview and investigate with regards to the official police investigation surrounding the death of Seth Rich. The representation shall not include media representation, unless otherwise permitted by the Client in writing.
- Granted rights and privileges as that of immediate family members of Seth Rich, with discussions with investigating agencies, i.e. Metropolitan Police Department and the FBI.

Capitol Investigations agrees to use its best efforts to investigate the matters set forth and perform the services for which it is being retained. Capitol Investigations makes no express warranties, assurances or guarantees with regards to the work that they will complete. Furthermore, the compensation payable to Capitol Investigations by the third party pursuant to this agreement are not in any way contingent upon or related to the results of the services performed or the information and details which are developed during the course of the investigation.

Capitol Investigations will not retain any additional clients in relation to the murder of Seth Rich. Capitol Investigations will not perform additional services (outside the scope of this agreement) that are related to the murder of Seth Rich.

This agreement shall be terminated immediately upon either party giving written notice to the other party.

Client further agrees to defend, indemnify and hold Capitol Investigations and/or its agents and employees harmless from any and all action, courses of action, claims, damages and demands of whatever type arising directly or indirectly from the services Capitol Investigations are being retained to perform pursuant to this agreement. The Client may, however, take actions against Capitol Investigations and/or its agents or employees for representations made to the media in violation of this agreement.

Capitol Investigations, LLC  
6710 Oxon Hill Road, Suite 210  
National Harbor, MD 20745  
(202) 805.8001

*RLW*

*MR*  
*AR* *JWR*

This agreement shall be binding upon Client's heirs, devisees, legatees, administrators, executors, successors, and assignees.

This agreement shall be construed and interpreted in accordance with the laws of the State of Maryland. If any portion of this agreement is determined to be invalid or unenforceable, the remainder of the agreement shall continue in full force and effect.

All information developed and submitted by Capitol Investigations LLC and provided to Client or Client's authorized representative shall be treated as strictly confidential and not released or disclosed to any third party without the prior written authorization of Capitol Investigations. Capitol Investigations shall not release any information regarding the investigation, including but not limited to findings, working theories or path forward to any third party without prior authorization by Client; unless that third party is an investigating agency, i.e. Metropolitan Police Department and the FBI.

Any and all compensation or fees associated with the investigation and this agreement shall be paid by Mr. Ed Butowsky, the "third party," in accordance with agreements made between Capitol Investigations and Mr. Ed Butowsky. Should any action involved in the investigation create a fee outside of this agreement, or should Mr. Ed Butowsky fail to pay fees, the Client is held harmless and will not be responsible for paying any fees, including outstanding balances.

This agreement constitutes the entire agreement between the parties with respect to the services to be provided by Capitol Investigations pursuant to this agreement. There are no other agreements, express, implied, written, oral or otherwise, except as expressly set forth herein. This agreement may only be modified in writing signed by both parties.

Dated:

3-14-17

CLIENT(S):

[Signature]  
[Signature]  
[Signature]

Dated:

3/14/2017

Capitol Investigations, LLC: By:

[Signature]

Capitol Investigations, LLC  
6710 Oxon Hill Road, Suite 210  
National Harbor, MD 20745  
(202) 805.8001

# **EXHIBIT 5**



EXECUTIVE CHAMBERS  
HONOLULU

BENJAMIN J. CAYETANO  
GOVERNOR

November 30, 1999

Ms. Ah Jook Ku  
Honolulu Media Council  
1314 Kalakaua Ave  
Honolulu Hawaii 96814

Dear Ms. Ku:

My name is Jackie Kido, and I am the Director of Communications for the Office of the Governor, State of Hawaii. I write to you after having received a series of complaints from State government officials regarding the journalistic practices of Pacific Business News (PBN).

The vast majority of these complaints involve a reporter named Malia Zimmerman. I am convinced, however, that Ms. Zimmerman's practices fully meet with the approval of PBN management. And this is why I feel compelled to bring the matter to your attention.

On behalf of the public servants that have been maligned, and the citizenry that has unduly lost faith in their government, I ask that you both set the record straight in the specific case brought to the Council's attention, as well as work to educate PBN on journalistic ethics and practices.

Warmest regards,

*Jackie Kido*  
Jackie Kido  
Director of Communications

**Complaint Form to  
Honolulu Media Council**

Name: State of Hawaii Signature \_\_\_\_\_

Jackie Kido, Director of Communications Ph: (808) 586-0034

Address: Office of the Governor

State Capitol

Honolulu, Hawaii 96813

**The Complaint**

Pacific Business News (PBN) has continuously ignored journalistic ethics by willfully engaging in the practice of manipulating information and knowingly reporting inaccurate, unbalanced and unsubstantiated stories. From printing unfounded accusations against State government alleging "acts of retribution", to knowingly presenting false government documents, these serious transgressions must be acknowledged and corrected immediately.

**The Damages**

The actions of PBN and its reporters has seriously damaged the reputations of both citizens and public servants. The most serious offense committed, however, is against the public at large by unduly and falsely eroding faith in government.

**The Remedy Sought**

A public statement of wrongdoing by PBN and an apology through each of the two major dailies, as well as its own publication. And finally, journalism ethics training for the PBN staff.

**A Specific Example**

The Small Business Task Force is an official body of State government. It is an administrative attachment to the State Department of Business & Economic Development & Tourism (DBEDT).

After meeting for nearly three years, one of 11 task force members (not the chair nor vice-chair) agreed to draft a proposed, cumulative report of task force proceedings and bring the draft back to the task force for approval.

The member—who was in possession of DBEDT letterhead—composed the draft on his own, marked it "final," and distributed it to task force members for review. A copy was also given to Pacific Business News.

Pacific Business News decided to pursue the story, and made contact with State government officials. It was explained to Pacific Business News before going to press that the draft was composed by only one member, it had not even been discussed and amended by the group, and in no way represented a report of the body. The document was not authorized, it was strictly one man's interpretation, and should not be published as a report of the task force.

Allowing one person's interpretation to stand as that of the body's—without the opportunity for the group to review and amend the final report—negates nearly three years of work by the citizen's panel. The intent of the committee was to identify systemic change needed—not to serve as a platform to advance one person's agenda.

The following people officially gave PBN notice before going to press that the citizen did not have authority to place his interpretation of the body's proceedings on State letterhead:

Date

10/20 DBEDT Director Seiji Naya to PBN Publisher Larry Fuller  
10/20 Communications Director Jackie Kido to Managing Editor Gina Mangieri  
10/20 DLNR Boating Chief Howard Ghering to Reporter Tim Ruel

PBN's reply was that, since it was on State letterhead (even if unauthorized, stolen, whatever the case) they were going to print it. When asked where they received the document, they would not offer a reply. This, alone, indicates the newspaper was a partner in the scheme and had knowledge that the report was not authentic.

PBN proceeded to headline task force member Wong's document as a "Report of the Small Business Task Force," sprinkling small disclaimers (as they so often do) alluding to the true nature of the report. The travesty is they even printed several hundred words of the text under the following headline:

***In Their Own Words: Excerpts from the regulatory relief task force's report***

This, even though they were given specific, pre-press notification that 1) It was not a report of the task force 2) It was written by only one member. Even the author of the report, Mr. William Wong, was angered that what he called an "unfinished draft" of the task force's report was published.

In closing, PBN's actions in this case were not just irresponsible, they were deceitful and wrong. I urge the Honolulu Media Council to take action by counseling PBN on proper journalistic practices and impressing upon them the important responsibility they carry as members of Hawaii's media community.

[ e n d ]

**A-54 PACIFIC BUSINESS NEWS**

FRIDAY, OCTOBER 29, 1999

## OPINION

### In their own words: Excerpts from the regulatory relief task force's report

The following is an excerpt of the introduction of the "Small Business Task Force on Regulatory Relief Final Report" dated Oct. 6, 1999:

In the three years since the Governor's Small Business Task Force on Regulatory Relief was established, it has heard many frustrated small business people throughout the State of Hawaii voicing their cries for help. Unfair enforcement actions, lack of small business input and rule-making, punitive citations and fines, subjective and arbitrary interpretation of rules by State and County inspectors, unreasonable tax costs and obstructive procedures imposed by government officials are common complaints that were heard by the Task Force.

These complaints only scratch the surface of inequities caused not only by the tens of thousands of rules and regulations, but mostly by the attitudes of government

regulators. The Task Force has concluded that even if it pecked away at correcting these mountains of rules that discourage entrepreneurship and capital investment in Hawaii, there still would not be a fundamental change in the anti-business climate of this State without a change in the attitudes of government officials and how they regulate.

The immigration to Hawaii of new residents keeps increasing each year with more sophisticated and economically aggressive people making homes and investments in Hawaii. The population growth is shifting where racial minorities, once a substantial majority in Hawaii, are now indeed a minority. Hawaii has tried to protect its lands, environment, and its people through restrictive regulatory and trade practices. However, this protectionist philosophy of limiting business growth has ultimately backfired and has done more to

erode the control and destinies of its local people.

In fact, limiting economic opportunities is causing a drain of Hawaii's best and brightest to the mainland. There is widening economic disparity between the mainland and Hawaii, not only caused by the downturn in tourism and economic activity, but also exacerbated by the anti-growth and anti-business policies and attitudes of government. If economic productivity worsens, our most talented people will leave the islands to pursue their careers. This will leave our less talented people to compete with the large immigration of more educated and sophisticated mainlanders seeking opportunities here with less regard to local traditions and the way of life.

This will inevitably cause a worsening of the environmental and consumer outcomes. There will be increasing disparities

between incomes and standards of living among people in Hawaii. The constrained economy will cause further deterioration in the local resident's ability to accumulate capital and invest in Hawaii. The land we want to preserve for our people will become utilized more by a growing influx of wealthier immigrants and will eventually be sold off to these foreign capitalists. Finally, a growing resentment will develop between those that can afford better facilities in Hawaii and the burgeoning underprivileged local population.

A major shift in attitude needs to take place in Hawaii. Government now needs to nurture small businesses, especially locally owned businesses that are already here, to flourish into larger businesses so that more and more capital can be accumulated to compete in an ever-growing global market.

## More discussion needed

It is rather unfortunate and of questionable journalism that Pacific Business News decided to run its headline story "Task force criticizes state attitude" in your Oct. 22 edition.

This story was based on a very early draft version of a report that was intended for members' review and comments only and was intended to serve a basis of discussion only. It would seem only fair to allow members of the task force the opportunity to properly prepare and present it's final report.

Some very controversial positions were espoused in that draft to elicit discussion from task force members. That discussion is scheduled for this coming week. I regret that you have hastily published your report prior to even our meeting, much less to our having a final product.

Reporter Zimmerman and Pacific Business News' apparent obsession with appearing "cutting edge" is hardly a service to our business community and often, as is the case this time, does a tremendous disservice.

Wouldn't it only have been proper to allow the members of the Small Business Task Force on Regulatory Relief the opportunity to properly prepare and vote to approve a report that best represents their findings gained from countless hours of research over a three-year period, rather than allow a reporter with little knowledge of the issues just to "scoop a story?"

Perhaps many of the issues addressed in your article will appear in the final report; however, it should not have been a decision by your newspaper to skip our dis-

cussion and approval process. The discussion and approval process is critical in the preparation of any document detailing the recommendations of a group.

It is quite ironic that in its final hours, the Small Business Task Force on Regulatory Relief is facing such media attention, for in our three years of research and reporting, our calls for assistance from your publication went unanswered. I certainly hope this is not the case when we ask your assistance in publicizing our actual final report.

**TIM MOORE**  
Chairman, Small Business Task Force  
on Regulatory Relief

**Editor's Note:** The report sent to Pacific Business News is titled "Small Business Task Force on Regulatory Relief Final Report," dated Oct. 6, 1999, and is presented on Small Business Task Force letterhead with the names of the 12 task force members.

All members had been sent this version, and task force members confirmed the report represented the board's conclusions. The report was to be reviewed by the full board this week and presented to state officials.

## Commending woman exec

What I found most interesting about PBN's Oct. 15 list of "Highest Paid Executives of Hawaii's Public Firms" was out of the 25 listed only one was a woman.

My congratulations go to Mary P. Carver, vice chair of Pacific Century Financial Corp. for a very respectable ranking of 11. She is an inspiration to all businesswomen in Hawaii who are attempting to

break through the glass ceiling that so obviously exists. While Hawaii has been blessed with an extraordinary pool of influential, powerful, intelligent and dynamic women in both the public and private sectors, it is apparent we aren't being compensated nearly as well as our male counterparts.

Maybe next year there will be more women on PBN's list, maybe not. One thing I do know for certain, it is just a matter of time before women will no longer settle for a pat on the head in lieu for fair compensation.

**HILLARY BARRACK-PALMER**  
President, Catapult Communications

## Focus on working together

It really saddens me to see the continuous reporting of negative relationships between business, government and labor. It's time to start focusing on how we can work together rather than look for every reason that tears us apart. Nobody benefits from this kind of divisiveness.

Our community needs the different perspectives that businesses, government and labor bring. How else can we have a balanced focus? It is time that we recognize and accept this ... that we stop trusting only in ourselves and doubting everyone else ... that we come together for the good of Hawaii.

As a subscriber, I sincerely hope that you too will do your part. The media has great influence, but even greater is the responsibility that comes with your role in our community.

**VICKY T. CAYETANO**  
First Lady and President and CEO of  
United Laundry Services Inc.

DANNY SANTIAGO  
CLASSIFIED ASSOCIATE MANAGER: NORA NELSON  
CLASSIFIED ACCOUNT EXECUTIVE: PHIL AMMON 955-8088

## PRODUCTION

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ASSISTANT DIRECTOR: ROSANNA COSTALES 955-8081  
GRAPHIC ARTIST: RUBEN DULOLAO 955-8082

## CIRCULATION

CIRCULATION FAX: (808) 955-8078

DIRECTOR: MARY BETH LOHMAN 955-8002  
CUSTOMER SERVICE REP: KATHERINE ELLWOOD 955-8040  
SALES ASSOCIATE: PAM LOPEZ 955-8003

## ADMINISTRATION

ADMINISTRATION FAX: (808) 955-8078

CORPORATE SECRETARY,  
& OFFICE MANAGER: DOREEN TAVARES 955-8074  
TREASURER & BUSINESS MANAGER: MYRA KAU 955-8072  
ASSISTANT CREDIT MANAGER: AGNES PANGILINAN 955-8073  
ADMINISTRATIVE ASSISTANT: STACIE PAHA 955-8075

## LETTERS-TO-THE-EDITOR POLICY

Pacific Business News welcomes letters from readers.

We reserve the right to edit for space and/or clarity. All letters must be typewritten or e-mailed and include writer's name, address and phone number.

Mail to PBN, 1833 Kalakaua Ave., 7th Floor, Honolulu, Hawaii 96815. Fax to (808) 955-8031. E-mail to <pbn@lava.net> or send via the Pacific Business News Web site at <www.amcity.com/pacific/>.

All submissions become the property of Pacific Business News and may be published or otherwise used in any medium.

...to be constructive.  
I am very disappointed in your article, "Task force criticizes state attitude" (PBN, Oct. 22, 1999) in which you reported on an unfinished draft of our task force's final report.

The draft report, on which you based your comments, was not even approved by the task force (the final report is scheduled to be released to the governor and the Legislature sometime next month).

Most importantly, the tone of your article was very misleading in that the draft report was meant to be a very constructive assessment of the regulatory climate and to provide, perhaps, innovative and positive recommendations for change in Hawaii. Government attitudes toward businesses are merely symptoms of a deeper problem that is addressed in the draft report, of which we are all to blame. It is fruitless to point fingers as we need the help and cooperation of the governor, the Legislature, appointed cabinet heads, administrators and civil servants, small businesses and their employees.

I certainly hope that your editorial staff can be more responsible in its reporting so that small business will not be perceived as always criticizing and attacking the system. Surely we all recognize that we need and want change and more efficiency in state and county government but we all need to constructively participate in achieving this result.

**WILLIAM L. WONG**

Taxation chairman and member of the  
Small Business Task Force  
on Regulatory Relief

Editor's note: The report to which the article refers was titled "Small Business

(Cont.)

Task Force on Regulatory Relief Final Report," the title page of which contained all task force members' names. Task force members contacted by PBN confirmed they had seen the report and that it accurately reflected their conclusions.

Several businesses in the industries covered by the report also agreed with its findings, calling the report the most candid, helpful criticism the government has received regarding business and industry regulations.

Retribution will not be tolerated

In response to the Oct. 1 article "Business allege retribution," several comments are in order: First, the reporter is disingenuous in connecting my name in the beginning of the article to a statement I never made. The piece stated that I rarely hear complaints about retribution, setting up what follows in the story based on this misinformation.

Second, I said at the Honolulu Rotary and say again, retribution will not be tolerated. After hearing Kitty Lagareta's claims at the meeting, I immediately asked the state Department of Labor and Industrial Relations Director Lorraine Akiba to investigate. In a letter dated Sept. 23, Akiba asked Lagareta to provide the department with specific information regarding the allegations in order to expedite any further investigation. As of Oct. 25, Lagareta had not responded.

(Cont.)

For the record, the Department of Labor and Industrial Relations Hawaii Occupational Safety and Health Division use a system to select establishments for inspection based on the employers reported workers' compensation claims and reported employment numbers. Meaning, businesses showing a ratio of injuries and illnesses in excess of the state average are examined.

In fact, HIOSH offers the Ho'olaulima Program to employers with injury rates twice the state average. This is a proactive training and resource plan educating employers about hazard awareness and health information, accompanied by consultative audits to identify problem areas...

According to HIOSH records, Lagareta chose to participate in the Ho'olaulima Program in October 1998. In the case of Pacific Allied Products and comments made by Linda Smith in the original article, her company was inspected in 1997 after reporting an injury rate more than 2.5 times the statewide average. The HIOSH records definitively show the history of each case, yet the reporter failed to even contact DLIR or HIOSH in researching the story. How does that best serve the business community?...

Retribution has no place in state government and I am not afraid to speak out to put an end to the rumors. People who allege such activity should step forward with specifics so that appropriate investigatory action can be taken. There is no getting around the need for specifics, otherwise we are left with bald allegations and no way to find solutions.

**MAZIE K. HIRONO**  
Lieutenant governor

Not frustrated with resign

In your recent article, "State's commitment to business questioned," (PBN, Oct. 22) there are some misleading thoughts that I am compelled to address. The article by Malia Zimmerman suggests that my resignation was prompted by frustration as a member of the Regulatory Review Board.

Let the truth be known, the reasons for my resignation were, first, due to the rapid growth of my business on Maui and secondly, that perhaps after three years my contribution was becoming diluted and "new members, new blood" could make a more significant impact...

I am extremely encouraged by the prospects of regulatory reform in our state. I am proud that the regulatory reform legislation passed by the Legislature and signed by the governor has been recognized nationally and continues to be used as a model in numerous other states across the nation.

Yes, the day-to-day process of regulatory reform can be extremely challenging both nationally and in our state. However, I never stated that I was discouraged with the process.

The implications of your article would imply a growing frustration by board members, that perhaps my resignation was just the tip of the iceberg. You couldn't be any further from the truth. The newly appointed regulatory review board is just beginning and these board members are extremely organized, focused and anxious to perform, so your implications of frustration are unfair.

**TIM MOORE**  
Maui

Nov 5, 1999

PBN

The Senate  
The Twentieth Legislature  
of the  
State of Hawaii

STATE CAPITOL  
HONOLULU, HAWAII 96813

October 4, 1999



NORMAN MIZUGUCHI  
PRESIDENT  
AVERY B. CHUMBLEY  
VICE PRESIDENT  
LES IHARA, JR.  
MAJORITY LEADER  
JONATHAN CHUN  
MAJORITY FLOOR LEADER  
WHITNEY T. ANDERSON  
MINORITY LEADER  
SAM SLOM  
MINORITY FLOOR LEADER

FIRST DISTRICT  
LORRAINE R. INOUE

SECOND DISTRICT  
DAVID M. MATSUURA

THIRD DISTRICT  
ANDREW LEVIN

FOURTH DISTRICT  
JAN YAGI BUE

FIFTH DISTRICT  
JOE TANAKA

SIXTH DISTRICT  
AVERY B. CHUMBLEY

SEVENTH DISTRICT  
JONATHAN CHUN

EIGHTH DISTRICT  
SAM SLOM

NINTH DISTRICT  
MATT MATSUNAGA

TENTH DISTRICT  
LES IHARA, JR.

ELEVENTH DISTRICT  
BRIAN TANIGUCHI

TWELFTH DISTRICT  
CAROL FUKUNAGA

THIRTEENTH DISTRICT  
ROD TAM

FOURTEENTH DISTRICT  
SUZANNE CHUN OAKLAND

FIFTEENTH DISTRICT  
NORMAN MIZUGUCHI

SIXTEENTH DISTRICT  
NORMAN SAKAMOTO

SEVENTEENTH DISTRICT  
DAVID IGE

EIGHTEENTH DISTRICT  
RANDY IWASE

NINETEENTH DISTRICT  
CAL KAWAMOTO

TWENTIETH DISTRICT  
BRIAN KANNO

TWENTY-FIRST DISTRICT  
COLLEEN HANABUSA

TWENTY-SECOND DISTRICT  
ROBERT BUNDA

TWENTY-THIRD DISTRICT  
BOB NAKATA

TWENTY-FOURTH DISTRICT  
MARSHALL IGE

TWENTY-FIFTH DISTRICT  
WHITNEY T. ANDERSON

CHIEF CLERK  
PAUL T. KAWAGUCHI

Gina Mangieri  
Editor  
Pacific Business News  
P.O. Box 833  
Honolulu, Hawaii 96808

Dear Ms. Mangieri:

Please permit me to take this means to request a correction to your article "Businesses allege retribution" which appeared in your October 1, 1999 edition.

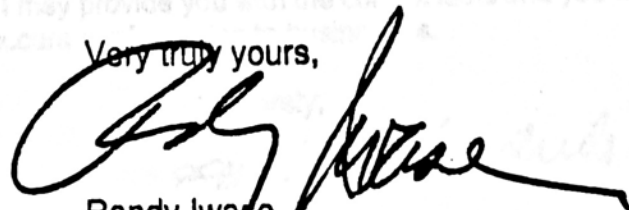
The article states that I experienced political retribution after speaking out "against Cayetano and Senate President Mizuguchi." The reference to Governor Cayetano is erroneous and should be deleted. When Malia Zimmerman and I were discussing the "retribution" issue I was referring solely to what has occurred in the State Senate. It was an unfortunate misunderstanding between Ms. Zimmerman and I that, perhaps, could have been clarified had either of us not assumed we were on the same wavelength.

I assumed in response to her query about what has transpired in the Senate that she was inquiring about the politics of retribution in the Senate and not to Governor Cayetano.

Please feel free to call me if you have any questions.

Your correction to the article will be appreciated.

Very truly yours,

  
Randy Iwase  
State Senator

BCC: Jackie Kido



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

CORRAINE H. AKIBA  
DIRECTOR  
LEONARD AGOR  
DEPUTY DIRECTOR

October 14, 1999

Ms. Malia Zimmerman  
PBN Staff Reporter  
Pacific Business News  
P. O. Box 833  
Honolulu, Hawaii 96708

Dear Ms. Zimmerman:

I am very disappointed that you did not contact me regarding the allegations in your October 1, 1999 article entitled "Businesses allege retribution". I feel you actually did a disservice to the small businesses in Hawaii. The Department of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division (HIOSH) has a consultation and training branch which provides valuable services to the business community. These state consultants help business owners identify hazards and implement a workable safety and health program specific to their needs that prevent or reduce accidents and lower costs. Businesses typically reduce their workers' compensation premiums by 20% after implementing such worker safety programs.

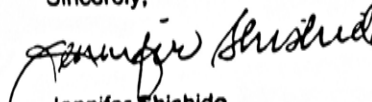
Additionally, for those establishments who get inspected during a particular year, which is less than 3% of the total number of employers in the state, the selection is based on wholly objective data comprising employers reported workers' compensation claims and employers reported employment figures. We have used essentially the same objective selection system for more than 20 years to assure that scarce inspection resources are directed to those establishments with the greatest proportion of injuries and illnesses. Currently, these are establishments with occupational injury and illness rates exceeding that of the state average.

I can assure you that there is not now and never has been any political influence from any officials of the Cayetano administration or "majority" legislators in determining establishments selected for inspection by HIOSH. I and all of my management staff are civil service employees who are not subject to the political influences of an appointed position.

The October 1 article does a disservice to both Hawaii's businesses and citizens by casting doubt on a valuable state government function and service. It further unfairly maligns all state workers who enter state service to make a meaningful contribution and who pride themselves on being above politics and political influence.

Please call me at 586-9116 so I may provide you with the correct facts and you can write a balanced article which would provide accurate information to businesses.

Sincerely,

  
Jennifer Shishido  
Administrator

Tim Moore  
495 Wainee Street  
Lahaina, Hawaii 96761  
667-2998 / 244-6135  
  
661-0637 fax direct  
E-mail tim@oldlahainaluan.com

October 26, 1999

Editor  
Pacific Business News  
1833 Kalakaua Avenue  
Honolulu, Hawaii 96815

Dear Editor,

In your recent article, "State's commitment to business questioned," there are some misleading thoughts that I am compelled to address. The article by Malia Zimmerman suggests that my resignation was prompted by frustration as a member of the Regulatory Review Board. Let the truth be known, the reasons for my resignation were, first, due to the rapid growth of my business on Maui and secondly, that perhaps after three years my contribution was becoming diluted and "new members, new blood" could make a more significant impact.

Further, the article quotes me as saying "Trying to overhaul state regulations is a huge challenge, and I'd like to see things done differently...." Again, Ms. Zimmerman must be confused. This is not a statement I would make nor would I be presumptuous enough to think I was clever enough to hold the solution. This is simply not how I speak or act.

On the contrary, I am extremely encouraged by the prospects of regulatory reform in our state. I am proud that the regulatory reform legislation passed by the legislature and signed by the Governor has been recognized nationally and continues to be used as a model in numerous other states across the nation. Yes, the day to day process of regulatory reform can be extremely challenging both nationally and in our state. However, I never stated that I was discouraged with the process.

The implications of your article would imply a growing frustration by board members, that perhaps my resignation was just the tip of the iceberg. You couldn't be any further from the truth. The newly appointed regulatory review board is just beginning and these board members are extremely organized, focused and anxious to perform, so your implications of frustration are unfair.

I am sorry there is not more of a story to my resignation. I honestly just needed the time to focus on my employees and customers. It's that simple.

Sincerely,

  
Tim Moore

# **EXHIBIT 6**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
JOEL RICH and MARY RICH,

Plaintiffs,

v.

FOX NEWS NETWORK, LLC, MALIA  
ZIMMERMAN in her individual and professional  
capacities, and ED BUTOWSKY, in his individual  
and professional capacities,

Defendants.  
----- X

Civil Action No. 1:18-cv-02223

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS TO DEFENDANT FOX NEWS NETWORK, LLC**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs Joel Rich and Mary Rich (collectively, "Plaintiffs") request that Defendant Fox News Network, LLC ("Fox") produce the following documents for inspection and copying, within thirty (30) days of service, at the offices of Susman Godfrey LLP, 1301 Avenue of the Americas, 32<sup>nd</sup> Floor, New York, New York 10019, or at such other location as the parties may mutually designate in writing.

### **DEFINITIONS AND INSTRUCTIONS**

1. The definitions and rules of construction set forth in Federal Rule of Civil Procedure 34 and Rule 26.3 of the Local Civil Rules of the United States District Court for the Southern District of New York (the “Local Civil Rules”) are hereby incorporated and shall apply to Plaintiffs’ First Set of Requests for Production of Documents to Defendant Fox (hereinafter, the “Requests”). These definitions shall apply throughout the Requests without regard to capitalization.

2. In addition to the definitions and rules of construction set forth in Local Civil Rule 26.3, to bring within the scope of the Requests all documents that might otherwise be construed to be outside of their scope, the following additional definitions and rules of construction shall apply: (i) the masculine, feminine, or neutral pronoun shall not exclude other genders; (ii) the word “including” shall be read to mean “including without limitation”; (iii) the present tense shall be construed to include the past tense and vice versa; (iv) references to employees, officers, directors, or agents shall include both current and former employees, officers, directors, or agents; and (v) the use of the singular form of any word includes the plural and vice versa.

3. As used in these requests, the following terms are to be interpreted in accordance with the following definitions:

a. All/Any/Each: The terms “all,” “any,” and “each” have the meaning set forth in Local Civil Rule 26.3(d)(1).

b. And/Or: The terms “and” and “or” have the meaning set forth in Local Civil Rule 26.3(d)(2).

- c. Agreement: The term “agreement” means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.
- d. Communication: The term “communication” has the meaning set forth in Local Civil Rule 26.3(c)(1).
- e. Concerning: The term “concerning” has the meaning set forth in Local Civil Rule 26.3(c)(7).
- f. Defendants: The term “Defendants” means: Fox News Network, LLC, Malia Zimmerman, and Ed Butowsky.
- g. DNC Wikileaks Incident: The term “DNC Wikileaks Incident” refers to the events leading up to and including the publication by Wikileaks of emails and attachments of the Democratic National Committee (“DNC”) in 2016.
- h. Document: The term “document” has the meaning set forth in Local Civil Rule 26.3(c)(2).
- i. Elected Official: The term “Elected Official” means any current, former, or prospective (past or present) official for elected office, and any staff member, agent, or member of any campaign, administration, or office of any current, former, or prospective elected official.
- j. Employee: The term “Employee” means, without limitation, current and former officers, directors, executives, managers, sales personnel, secretaries, clerical staff, messengers, or any other person paid directly or indirectly by You.
- k. Electronically Stored Information/ESI: The terms “electronically stored information” or ESI refer to any portion of data available only on a computer or other device

capable of storing electronic data. “Electronically stored information” includes, but is not limited to, email (whether conducted intra-company using company email addresses or conducted through an individual, non-company account (*e.g.*, Bloomberg, Gmail, Yahoo!, or AOL)), spreadsheets, databases, word processing documents, images, presentations, application files, executable files, log files, and all other files present on any type of device capable of storing electronic data. Devices capable of storing electronically stored information include, but are not limited to: servers, desktop computers, portable computers, handheld computers, flash memory devices, wireless communication devices, pagers, workstations, minicomputers, mainframes, and all other forms of online or offline storage, whether on or off company premises. ESI is meant to include instant messages (such as but not limited to Signal, Cisco Jabber, IBM Sametime, Wickr, ICQ, Kik, BBM, Gchat, Slack, and similar types of messages), **cell phone text messages (SMS messages and MMS messages)**, **voicemail messages**, and similar types of messages. ESI is also meant to include any records of such communications or messages, including phone records. ESI is meant to include any social media communication (such as but not limited to Twitter, Facebook, and Periscope). For any document kept in electronic form, the term “document” includes any metadata associated with the document.

l. **Fox**: The term “Fox” means Fox News Network, LLC and its past or present subsidiaries, affiliates, attorneys, agents, representatives or other persons acting on behalf of Fox, including but not limited to any local affiliates or contributors, whether paid or unpaid.

m. **Law Enforcement**: The term “Law Enforcement” means any current or former member of any government organization devoted to investigation or enforcement of law, including, but not limited to the D.C. Metropolitan Police Department, the Federal Bureau of

Investigation, the Central Intelligence Agency, any District Attorney office, and any United States Attorney office.

n. Meeting: The term “meeting” means the contemporaneous presence of two or more persons (whether in person or via any electronic method of communication including all telephonic, computer, and electronic-assisted communications), whether such presence was pre-arranged or by chance, formal or informal, business or personal, or occurred in connection with or as part of some other activity or purpose.

o. Person: The term “person” has the meaning set forth in Local Civil Rule 26.3(c)(6).

p. Retraction: The term “Retraction” shall refer to Fox’s retraction of the Zimmerman News Article, which occurred on May 23, 2017, and stated “[o]n May 16, a story was posted on the Fox News website on the investigation into the 2016 murder of DNC Staffer Seth Rich. The article was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed.”

q. Retraction Review: The term “Retraction Review” shall refer to the “appropriate review” referenced by Fox in the Retraction.

r. Rich Family: The term the “Rich Family” means Joel, Mary, Aaron, or Seth Rich, together, individually, or in any combination.

s. Rich/Wikileaks News Items: The term “Rich/Wikileaks News Items” means any article, interview, segment or other news item whether or not ultimately published or aired, including, but not limited to all such materials that relate or refer to both Seth Rich and

Wikileaks and aired or published or contemplated to be aired or published on foxnews.com, the Fox News television station, or the Washington, D.C. local Fox affiliate.

t. You/Your: The terms “you” or “your” means Fox News Networks, LLC and its past or present subsidiaries, affiliates, attorneys, agents, representatives or other persons acting on behalf of Fox, including but not limited to any local affiliates or contributors, whether paid or unpaid.

u. Zimmerman News Article: The term “Zimmerman News Article” shall mean, each of the two articles authored by Malia Zimmerman and published by Fox News on May 16, 2017. If used in the plural (“Zimmerman News Articles”), this term shall mean both the articles, together.

4. Unless otherwise directed, these requests seek documents dating from May 1, 2016 to the present.

5. Any document bearing on any sheet any marks which are not a part of the original text (including, by way of example and not by way of limitation, initials, stamped indicia, comment, or notation of any character) is to be considered a separate document from the original for the purposes of these Requests.

6. If any document is no longer in existence, state for each such document the type of document, the information contained therein, the date upon which the document ceased to exist, the circumstances under which the document ceased to exist, the location where the document was destroyed, the identity of all persons having knowledge of the circumstances under which the document ceased to exist, and the identity of all persons having knowledge or who had knowledge of the document's contents.

7. In producing documents and ESI, You are requested to furnish all documents, ESI, or things in Your possession, custody or control, regardless of the physical location of the documents or ESI, or whether such documents or ESI or other materials are possessed directly by You or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives, or investigators.

8. Except as otherwise stated herein, all ESI shall be produced in a format to be agreed upon by the parties.

9. If You object to producing a document or electronically stored information, You must do as follows:

a. If You withhold a document or electronically stored information under claim of privilege (including the work product doctrine), provide the information set forth in Local Rule 26.2 (a): (i) the type of document, e.g., letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to (a) identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other; and (b) evaluate the claim of privilege.

b. If You object for any reason other than privilege, You must identify the withheld document and, in addition to the information requested above, state the reason for withholding the document.

c. If You object to a request on the ground that production would be unduly burdensome, You must produce all responsive documents to that request that You can produce

without undue burden and explain which documents are being withheld and the exact nature of the burden.

10. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, You must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted, identify as to each such document the reason for the redaction. Any redaction must be clearly indicated on the face of the redacted document.

11. When producing audio recordings or transcripts thereof, indicate for each recording or transcript the file name of the recording or transcript and the date and starting and ending time thereof. Plaintiffs request that responsive ESI contained on the audio recordings or audio tapes be produced either in mutually-agreed upon native audio file format, (such as .wav) or as searchable text on External USB 2.0 hard drives with clear breaks delineating between messages/conversations. Plaintiffs further request that Defendants provide all catalog information concerning the audio recordings or tapes, including the following: date of conversation, custodian, conversation participants, conversation description, time of conversation and original file format. Plaintiffs also request that Defendant's conversion process, including tools used to create searchable text be documents and be shared with Plaintiffs to assure quality in this process. Plaintiffs are willing to meet and confer on the actual text deliverable formatted and load file specifications once Defendant shares more details about the quantity and current format of these audio files.

12. Furnish all documents or material in your possession, custody or control, regardless of whether such documents or materials are possessed directly by your or Your

directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators or by Your attorneys or their agents, employees, representatives or investigators.

13. These document requests are continuing and require supplemental responses as specified in Federal Rule of Civil Procedure 26(e) if You (or any person acting on Your behalf) obtain additional information called for by the request between the time of the original response and the time set for trial. Each supplemental response shall be served on Plaintiffs no later than thirty (30) days after the discovery of additional, responsive information, and in no event shall any supplemental response be served later than sixty (60) days before trial.

14. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, documents shall be produced as they are kept in the usual course of business or segregated as responsive to a specific request enumerated in this First Request for Production of Documents.

### **REQUEST FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

All documents and/or communications relating or referring to the Rich Family or any member of the Rich Family.

#### **REQUEST FOR PRODUCTION NO. 2:**

All documents and/or communications relating or referring to any sources for any Rich/Wikileaks News Item.

#### **REQUEST FOR PRODUCTION NO. 3:**

All documents regarding and/or communications with or about Ed Butowsky, including but not limited to: (1) any Agreements, informal or formal between Mr. Butowsky and Fox; (2) any compensation exchanged between Fox (including any employee, agent, or affiliate) and Mr.

Butowsky; (3) any articles authored or appearances by Mr. Butowsky on Fox; and (4) any communications of any kind. There is no time limit on this request.

**REQUEST FOR PRODUCTION NO. 4:**

All documents regarding and/or communications with or about Rod Wheeler, including but not limited to (1) any Agreements, informal or formal between Mr. Wheeler and Fox; (2) any compensation exchanged between Fox (including any employee, agent, or affiliate) and Mr. Wheeler; (3) any articles authored or appearances by Mr. Wheeler on Fox; and (4) any communication of any kind between You and Mr. Wheeler. There is no time limit on this request.

**REQUEST FOR PRODUCTION NO. 5:**

All documents regarding and/or communications with or about any Law Enforcement in connection with the DNC Wikileaks Incident. There is no time limit on this request.

**REQUEST FOR PRODUCTION NO. 6:**

All documents reflecting the organization of Fox, and its relationship with any affiliates, as of June 1, 2016, including but not limited to organizational charts.

**REQUEST FOR PRODUCTION NO. 7:**

All documents and/or communications regarding or reflecting any investigation into the sources or support for the Zimmerman News Articles both before and after publication, including but not limited to the Retraction Review, the Retraction, and any other investigation related to publication of any Rich/Wikileaks News Items.

**REQUEST FOR PRODUCTION NO. 8:**

All documents and/or communications reflecting persons at Fox (including employees, agents, contributors, independent contractors or other individuals) who were involved in any way with any Rich/Wikileaks News Items, including but not limited those who investigated, wrote, edited, or produced such Rich/Wikileaks News Items, and those who managed or supervised Malia Zimmerman, Marina Marraco, Sean Hannity, and/or any other Fox employee or contributor involved in any Rich/Wikileaks News Item.

**REQUEST FOR PRODUCTION NO. 9:**

Any documents and/or communications with or regarding Sy Hersh.

**REQUEST FOR PRODUCTION NO. 10:**

Any documents and/or communications reflecting Fox's policies regarding journalistic integrity, investigation of sources, treatment of sources, disclosure of sources, interaction with law enforcement, interaction with government officials, internal review processes, treatment of paid and unpaid contributors.

Dated: April 26, 2018

Respectfully submitted,

By: s/Arun Subramanian  
Arun Subramanian

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via email, this 26<sup>th</sup> day of April, 2018, as indicated below:

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*s/ Elisha Barron*\_\_\_\_\_

Elisha Barron

# **EXHIBIT 7**

CONTRIBUTOR AGREEMENT

1. Rod Wheeler ("Contributor") hereby grants to Fox News Network, LLC, its parent, successors, licensees and assigns, (collectively "Fox"), the irrevocable and exclusive right (but not the obligation) to record, exhibit and otherwise use Contributor's name, likeness, photograph and voice on television (hereinafter referred to as the "Appearances") throughout the Term hereof as referenced below, in connection with opinions/analyses/commentary concerning issues, news events and related subject matters, to be telecast on any programs, advertisements and promotions for Fox, and disseminated/broadcast on the Fox News Channel, the Fox Business Network, Foxnews.com, Foxbusiness.com and/or on any other programming produced in whole or in part by Fox (collectively, the "Programs").

1.1. For the avoidance of all doubt, under no circumstances shall Contributor appear on other television programs or networks, including, without limitation, on CNN, HLN, MSNBC, or CNBC.

2. The Appearances will be scheduled at mutually agreed upon times and will originate from Fox's studios in New York City or Washington, D.C. or from such other locations as mutually agreed upon by the parties.

3. The term ("Term") of this Agreement shall commence as of January 1, 2017 and shall continue through and including December 31, 2018, unless sooner terminated for cause.

4. Other than during the period commencing thirty (30) days immediately prior to the expiration of the Term, at no time during the Term shall Contributor in any manner, directly or indirectly, solicit or entertain an offer or enter into any negotiation or agreement with any other person or party regarding Contributor's television services following the Term hereof. Contributor acknowledges and agrees that any offer received by Contributor as a result of negotiations permitted by the foregoing sentence shall be subject to Fox's first refusal rights as set forth in the next sentence. Contributor hereby grants to Fox for sixty (60) days following the end of the Term of this Agreement a right of first refusal for Contributor's television services following the end of the Term. Accordingly Contributor shall not enter into a subsequent television deal for 60 days following the end of the Term, unless Contributor has first given Fox written notice of the terms and conditions of the offer acceptable to Contributor, and an opportunity for 5 business days to match the terms and conditions of such subsequent offer.

5. Contributor agrees that Fox is and shall be the sole and exclusive owner of the Programs, including, without limitation, all rights (including copyrights) and components contained therein, for all purposes and uses whatsoever, throughout the universe in perpetuity. Fox shall also have the unrestricted right to edit the content and text of the Programs in any manner or form.

6. In full consideration for Contributor's Appearances and the rights granted hereunder, Fox agrees to pay and Contributor agrees to accept the per Appearance fee of \$515<sup>1</sup>, less

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<sup>1</sup> The definition of an "Appearance" hereunder shall also include Contributor's off-air

  
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deductions as required by law. Such payments will be made within 30 days of each Appearance.

7. Contributor hereby releases Fox from and against any and all claims or actions of any nature arising by reason of the Appearances or statements made by Contributor on or in connection with the Appearances which claims or actions are finally adjudicated in a court of competent jurisdiction, or Fox's exercise of any or all rights herein granted.

8. Contributor represents and warrants that he is 18 years of age or older and has the full right, power and authority to enter into this Agreement and grant the rights herein provided, and that this Agreement does not conflict or interfere in any way with any other agreement to which Contributor may be a party, whether written or oral.

9. Under no circumstances and at no time, either during or after the Term, shall Contributor directly or indirectly, disclose, divulge, render or offer any knowledge or information to any other person or party whatsoever concerning matters relating to any terms or conditions of this agreement except to Contributor's financial, legal and business advisors or as otherwise required by law.

10. Neither Contributor nor any of his agent(s), representative(s) or designee(s) shall issue any statements or grant any interviews concerning Contributor's services hereunder without Fox's prior approval in each instance. This paragraph 10 is not meant to restrict Contributor from stating publicly that he is a Contributor for Fox News nor is this paragraph 10 intended to restrict Contributor from answering spontaneous press inquiries concerning his overall relationship with Fox News.

11. Contributor acknowledges and understands that Fox assumes Contributor will conduct himself at all times in an honest and ethical manner, and in compliance with any and all applicable federal, state, local, and/or foreign laws, and that if at any time, in Fox's good faith, reasonable and informed opinion, Contributor's behavior deviates from such honesty, ethics, and/or lawfulness, then Fox shall have the right to terminate this Agreement effective immediately upon notice to Contributor.

12. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction or interpretation of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

13. Any controversy, claim, or dispute arising out of or relating to this Agreement shall be brought before a mutually selected arbitrator/mediator and held in New York City in accordance with the rules of JAMS. Such arbitration/mediation, all filings, written evidence, and testimony connected with the arbitration/mediation and all relevant allegations and events leading

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assistance, as requested by Fox, as follows: Up to two-hour's worth of Contributor's time for off-air assistance which Fox requests shall count as one Appearance.

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up to the arbitration/mediation, shall be held in strict confidence. The arbitrator/mediator shall issue a written opinion setting forth the reasons for his or her decision, and the decision shall be final and binding.

14. This Agreement constitutes the entire agreement and understanding between the parties, and it supersedes and replaces all prior communications, negotiations and agreements, whether written or oral. This Agreement cannot be changed, modified, amended or supplemented, except in a subsequent writing that contains the handwritten signature of the parties. Subsequent emails with typed names and/or signature blocks are not sufficient for purposes of changing, modifying, amending or supplementing this Agreement. There are no representations, promises, warranties, covenants, undertakings or understandings with respect to the subject matter contained herein except as expressly set forth herein. This Agreement shall be governed by the laws of the State of New York. This Agreement may be signed in counterparts.

Date: 11/29/2016

**CONTRIBUTOR**

Rod Wheeler

Name: Rod Wheeler

Address: 14006 Silver Teal Way  
Upper Marlboro, MD 20774

Tel. No. (202) 368-3007

**FOX NEWS NETWORK, LLC ("FOX")**

Date: 12/5/16

By: [Signature]

Title: Co-President